

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ERIC and LAURA ZANN, husband)	
and wife,)	
)	No. 56403-0-I
Respondents,)	
)	DIVISION ONE
v.)	
)	
KING COUNTY and its Treasurer,)	
GARRY HOLMES,)	
)	
Respondents,)	
)	UNPUBLISHED OPINION
JAMES A. GUSE and JANE DOE)	
GUSE, husband and wife; and JOHN R.)	
HERZOG and JANE DOE HERZOG,)	
husband and wife,)	
)	
Appellants.)	FILED: September 11, 2006

DWYER, J. — Where real property is to be sold at foreclosure in order to satisfy an unpaid tax obligation, a statute provides that the notice of sale “must include the local street address, if any, for informational purposes only.”¹ In this case, the trial court set aside a tax foreclosure sale for lack of jurisdiction, premised upon the inclusion of an incorrect street address in the notice of sale. However, where the legislature has specifically declared that the required listing of a street address is “for informational purposes only,” the trial court erred by concluding that such information was intended by the legislature to be included in the notice for jurisdictional purposes. Accordingly, we reverse.

¹ RCW 84.64.050.

FACTS

James A. Guse, John R. Herzog, and their respective spouses owned a parcel of real property known as the Wildness Rim Division 1, Lot 143 (King County tax parcel number 940700-1430-08), which was sold at a King County tax foreclosure sale and purchased by Eric and Laura Zann for \$120,026.

Prior to the foreclosure sale, the Zanns obtained information from the King County assessor's office website, which indicated both that a house was located on the subject property and that the property's street address was 42501 Southeast 170th Court in North Bend. The Zanns drove by the property, verified the street address, and identified the house from the information they had obtained. At the foreclosure sale, the Zanns bid on the subject property believing that a house was located thereon. The Zanns were the highest bidders.

After the sale, the Zanns confirmed with a clerk at the King County assessor's office that there was a house on the property.² Shortly thereafter, however, the Zanns learned that the property they had purchased was, in fact, a vacant lot. The Zanns then brought this action seeking to set aside the foreclosure sale and to recover the sale proceeds.

The Zanns, as plaintiffs, and the Guses and the Herzogs, as defendants,

² The assessor's office clerk gave the Zanns a picture of a house purportedly located on the subject property.

brought cross-motions for summary judgment. Defendant King County filed a memorandum in support of the Zanns' summary judgment motion.

The trial court granted the Zanns' motion, setting aside the property tax foreclosure sale for lack of jurisdiction. In so doing, the court determined that:

There was no information from which a person of ordinary intelligence, from an examination of the foreclosure proceedings, could locate the property to be foreclosed. The information, including the inaccurate street address in the Certificate of Delinquency, was misleading.³

Consequently, the court ordered that the bid proceeds, in the amount of \$106,735, be refunded to the Zanns, with interest. It also ordered that King County disburse to the Zanns \$13,265, the amount applied from the sale proceeds in satisfaction of the tax debt due on the foreclosed property.

DISCUSSION

I. Standard of Review

This court reviews an order of summary judgment de novo, performing the same inquiry as the trial court. Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). We must have before us exactly the same record that the trial court considered in rendering summary judgment. LeBeuf v. Atkins, 93

³ Clerk's Papers at 80. The court examined the information in the certificate of delinquency issued by King County. It contained a property description of the subject property. The court found that the inaccurate street address set forth therein was misleading. Generally, a certificate of delinquency provides: (1) a description of the property subject to foreclosure; (2) the tax years for which there are delinquent property taxes and fees; (3) the amount of tax, fees, penalties, and interest due on the subject property; and (4) the known or reputed owner of the property.

Wn.2d 34, 36, 604 P.2d 1287 (1980). To that end, a summary judgment order must comply with RAP 9.12, which provides, in pertinent part:

On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered.

Summary judgment is properly granted when the pleadings and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wn.2d 692, 698, 952 P.2d 590 (1998).

2. Jurisdictional Elements

The Guses and the Herzogs contend that the trial court erred in setting aside the tax foreclosure sale for lack of jurisdiction.

A tax foreclosure by a county is a proceeding in rem. Kupka v. Reid, 50 Wn.2d 465, 467, 312 P.2d 1056 (1957). In the context of an in rem tax foreclosure action, the necessary jurisdictional elements are: subject matter jurisdiction; personal jurisdiction over the parties whose interests in the res are to be extinguished; and jurisdiction over the res. Colby v. Himes, 171 Wash. 83, 87, 17 P.2d 606 (1932) (“[W]here no jurisdiction is acquired over the subject matter of an action or the person against whom the judgment rendered operates, any judgment rendered is void.”); Napier v. Runkel, 9 Wn.2d 246, 261, 114 P.2d

534 (1941) (“In a proceeding in rem, ... jurisdiction of the res must clearly appear.”). “[N]otice complying with statutory dictates is a jurisdictional prerequisite to the entry of a valid judgment and to the enforceability of the foreclosure sale.” Pierce County v. Evans, 17 Wn. App. 201, 204, 563 P2d 1263 (1977). Where jurisdiction is lacking, the foreclosure sale is void. Id.

In this case, it is not claimed that the superior court lacked either subject matter jurisdiction or personal jurisdiction over the persons with interests in the res. The resolution of the question presented turns on whether the trial court had jurisdiction over the res, i.e., the foreclosed property.

a. Jurisdiction Over the Res

In a tax foreclosure sale, “a legally adequate description is a prerequisite to the court’s acquisition of jurisdiction over the res.” Stritzel v. Smith, 20 Wn. App. 218, 220, 579 P.2d 404 (1978). Accord In re Proceedings for Foreclosure of Liens for Delinquent Real Property Taxes, 117 Wn.2d 77, 84, 811 P.2d 945 (1991) (Liens I) (“[I]n order for the superior court to obtain jurisdiction and to enter judgment, any notice must contain a sufficiently accurate property description”). While a letter-perfect description is not required, a foreclosure notice must describe the res with “reasonable certainty,” so that “a person of ordinary intelligence” will be able to locate the property. City of Centralia v. Miller, 31 Wn.2d 417, 423-24, 197 P.2d 244 (1948). “If the description affords an intelligent means of identifying the property and does not mislead, it is

sufficient.” Id. at 424.

A proper jurisdictional inquiry must begin with the applicable statute:

The treasurer shall file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer shall thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates. Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer shall send notice by regular first class mail. The notice shall include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against the property may be brought in one action and all persons interested in any of the property involved in the proceedings may be made codefendants in the action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of the property shall be considered and treated as the owner or owners of the property for the purpose of this section, and if upon the treasurer's rolls it appears that the owner or owners of the property are unknown, then the property shall be proceeded against, as belonging to an unknown owner or

owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of the proceedings and of any and all steps thereunder: PROVIDED, That prior to the sale of the property, the treasurer shall order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders shall be considered and treated as the owner or owners of the property for the purpose of this section, and shall be entitled to the notice provided for in this section. Such title search shall be included in the costs of foreclosure.

RCW 84.64.050 (emphasis added).

In order to determine whether the description of the foreclosed property was sufficiently accurate to confer jurisdiction over the res, the trial court examined the certificate of delinquency rather than the “notice” referred to in RCW 84.64.050. In fact, the parties did not submit the notice of sale to the trial court.⁴ However, RCW 84.64.050 clearly provides that it is the notice that must include the information necessary to confer jurisdiction. Thus, a proper jurisdictional inquiry requires the court to review the contents of the notice. Accordingly, the trial court erred by granting summary judgment on jurisdictional grounds without having reviewed the notice.

⁴ Our review of the record indicates that the “notice” referenced in RCW 84.64.050 is not included in the record on review and was never submitted to the trial court for its examination. Citing pages 60 through 64 of the Clerk’s Papers, the Zanns claim that the “assessor’s records were incorporated by reference in the notice of sale.” Br. of Resp’t at 5. This citation is both false and misleading. No such evidence appears in the record before us. During oral argument, the Zanns attempted to dismiss this failure by asserting that the “notice of sale was not in dispute.” To the contrary, the contents of the notice are critical to a proper jurisdictional analysis. By disputing jurisdiction, the Zanns put at issue the contents of the notice.

b. “For Informational Purposes Only”

In 1991, while Liens I was pending in the Supreme Court, the legislature amended the local address requirement provision of RCW 84.64.050.⁵ As stated above, the amended statute provides:

The notice shall include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only.”

RCW 84.64.050 (emphasis added).⁶

In interpreting a statute, this court seeks to ascertain the legislature's intent. State v. J.M., 144 Wn.2d 472, 480, 28 P.3d 720 (2001). Such intent is discerned by resorting to principles of statutory construction and relevant case law. Kilian v. Atkinson, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). All language within the statute must be given effect so that no portion is rendered meaningless or superfluous. Davis v. Dep’t of Licensing, 137 Wn.2d 957 , 963, 977 P.2d 1231 (1999). Appellate courts are duty bound to give meaning to every word the legislature includes in a statute and must avoid rendering any language superfluous. City of Seattle v. Williams, 128 Wn.2d 341, 349, 908

⁵ In May 1991, the governor signed the bill amending RCW 84.64.050, Substitute H.B. 1316, 52nd Leg., Reg. Sess. (Wash. 1991). The amended statute became effective in July 1991. Liens I was filed by the Supreme Court in June 1991.

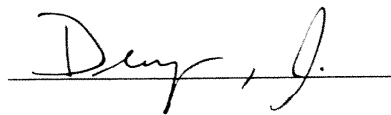
⁶ In both the trial court and on appeal, the Zanns rely heavily on Liens I. This reliance is misplaced as both that case and Liens II (In re Proceedings for Foreclosure of Liens for Delinquent Real Property Taxes), 123 Wn.2d 197, 867 P.2d 605 (1994) (the subsequent appeal of the decision made on remand), were based on the 1972 version of RCW 84.64.050, rather than the 1991 version, which is applicable here.

P.2d 359 (1995). When the legislature makes a material change in the wording of a statute, a change in legislative purpose is presumed. State v. Russell, 84 Wn. App. 1, 4, 925 P.2d 633 (1996). The legislature is presumed not to engage in unnecessary or meaningless acts. Bailey v. Allstate Ins. Co., 73 Wn. App. 442, 446, 869 P.2d 1110 (1994).

The parties do not cite any authority to assist us in construing the meaning of the 1991 amendment's addition of the phrase, "for informational purposes only." We presume, however, that this change was intended to be meaningful. It is not necessary for us to explicate all possible manifestations of the term. It is clear that—at a minimum—"for informational purposes only" means that it is not "for jurisdictional purposes." Thus, the trial court erred in relying upon the inaccurate street address in making its determination that the foreclosure sale needed to be set aside for want of jurisdiction.

On the state of the briefing and the record before us, we are unable to determine any issues beyond those which we have addressed. The order granting summary judgment in favor of the Zanns is reversed and the cause is remanded to the trial court for further proceedings consistent with this opinion.

Reversed.

A handwritten signature in black ink, appearing to read "Dwyer, J.", written over a horizontal line.

WE CONCUR:

No. 56403-0-I/10

Edington, J.

Cox, J.